1333.

SUPREME COURT OF THE UNITED STATES.

No. 154.

DANIEL POORMAN AND AL., PL'FFS IN ER.,

vs.

WILLIAM A. WOODWARD & WILLIAM C. DUSENBERRY, LATE PARTNERS UNDER THE FIRM OF WOODWARD & DUSENBERRY.

IN ERROR TO THE CIRCUIT COURT U. S. FOR THE SOUTHERN DISTRICT OF OHIO.

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1994

Pleas begun and held at the court-house in the city of Cincinnati, on the third Tuesday in the month of October, that being the twenty-first day of that month, in the year of our Lord one thousand eight hundred and fifty-six, and of the independence of the United States of America the 81st, before the honorable John McLean and the honorable Humphrey H. Leavitt, judges of the circuit court of the United States, within and for the southern district of Ohio. Among other proceedings had were the following, to wit:

WM. A. WOODWARD and WM. C. DUSENBERRY, late partners in business, under the firm of WOODWARD & DUSENBERRY,
vs.
DANIEL POORMAN, PETER OVERMIER, GEORGE W. BINKLEY, BERNARD BOWMAN, JACOB POORMAN, JOHN FISHER, senr., and JACOB THOMAS.
} In assumpsit.

Be it remembered, that heretofore, to wit, on the twenty-sixth day of September, in the year of our Lord one thousand eight hundred and fifty-one, came the said plaintiffs, by their attorneys, and sued out of the clerk's office of the circuit court of the United States, within and for the district of Ohio, a certain writ of summons ad respondendum against the said defendants, in the words and figures following, to wit:

Summons.

UNITED STATES OF AMERICA,
District of Ohio, ss.

To the Marshal of said district, greeting:

We command you to summon Thomas Hood, William F. Moeller, Daniel Poorman, Peter Overmier, George W. Binkley, Bernard Bowman, Jacob Poorman, John Fisher, senr., Joseph Good, and Jacob Thomas, citizens of and residents in the State of Ohio, if they be found in your baliwick, to be and appear before the judges of the circuit court of the United States, for the district of Ohio aforesaid, at Columbus, on the third Tuesday in the month of October next, to answer unto William A. Woodward and William C. Dusenberry, late partners in business, under the firm of Woodward & Dusenberry, citizens of and residents in the State of New York, of a plea of assumpsit damages twenty thousand ($20,000) dollars, and have then and there this writ.

[REC. CLIV. D. T. 1857.]—1

Witness the honorable Roger B. Taney, chief justice of the United States, this 26th day of September, 1851, and in the 76th year of the independence of the United States of America.

[SEAL.]

Attest: WM. MINER,
Clerk.

Endorsement of cause of action.

On which said writ was the following endorsement, to wit: Suit bro't to recover the amount due by virtue of a promissory note, executed by defendants to plaintiffs, bearing date Oct. 24th, 1849, for the payment of $15,000 dollars thirty days after date, also money counts.

SMYTHE & SPRAGUE,
Att'ys for Pl'ffs.

Marshal's return.

And afterwards, to wit, at the October term of said court, in the year of our Lord one thousand eight hundred and fifty-one, being the time to which said writ was made returnable, came the marshal to whom the same was directed, and made return thereof into court here, with his proceedings endorsed thereon, in the words and figures following, to wit:

"Served this writ by delivering true and certified copies thereof to Jacob Thomas, on the 4th day of Oct.; to George W. Binkley, Joseph Good, and Jacob Poorman, on the 10th day of October; to Bernard Bowman, Peter Overmier, and Daniel Poorman, on the 14th day of October; and to John Fisher, sen., on the 16th day of October, 1851. Not found as to William F. Moeller and Thomas Hood.

October 21st, 1851. J. W. SHIRLEY,
Deputy for
G. A. JONES,
Marshal, O. D."

Continuance.

And thereupon, this cause was continued; and afterwards, to wit, on the 9th day of January, in the year of our Lord one thousand eight hundred and fifty-two, came the said plaintiffs, by their attorneys, and filed their declaration herein against the said defendants, in the words and figures following, to wit:

Declaration.

UNITED STATES OF AMERICA,
District of Ohio, ss:

Circuit Court, 7th circuit, October Term, A. D. 1851.

Daniel Poorman, Peter Overmier, George W. Binkley, Ber-

1335.

nard Bowman, Jacob Poorman, John Fisher, Joseph Good, and Jacob Thomas, were summoned to answer unto William A. Woodward and William C. Dusenberry in a plea of assumpsit; and the marshal having returned not found as to Thomas Hood and William F. Moeller, against whom process was also issued in this cause, now come the said plaintiffs, who are citizens of the State of New York, and complain of the said defendants, who are citizens of the State of Ohio, for that, whereas heretofore, to wit, on the 24th day of October, A. D. 1849, at New York, to wit, at the State of Ohio, and district aforesaid, the said plaintiffs were partners in trade, under the name of Woodward & Dusenberry, and so being such partners, the said defendants then and there executed their certain promissory note of that date, signed by the said Binkley by the signature of G. W. Binkley, and by the other of said defendants by their names aforesaid, jointly and severally, with the said Moeller, who signed the same by the signature of Wm. F. Moeller, and the said Hood, who signed the same by the signature of Thos. Hood, and then and there delivered the same to the said plaintiffs, and thereby promised to pay the said plaintiffs, as partners as aforesaid, at their office in New York, the sum of fifteen thousand dollars, for value received, thirty days after the date thereof; which period has now long since elapsed. And the said defendants afterwards, to wit, on the day and year aforesaid, at New York, to wit, at the State of Ohio, and district aforesaid, in consideration of the premises, faithfully promised to pay the said sum of money in said promissory note mentioned to the said plaintiffs, according to the tenor and effect thereof. And also for that whereas heretofore, to wit, on the first day of January, A. D. 1850, at New York, to wit, at the State and district aforesaid, the said defendants with the said Hood and Moeller were indebted to the said plaintiffs, as partners as aforesaid, in the sum of five thousand dollars, for money before that time had and received by the said defendants with the said Hood and Moeller to and for the use of the said plaintiffs; and also in the further sum of five thousand dollars, for so much money before that time paid, laid out, and expended by the said plaintiffs to and for the use of said defendants, and said Hood and Moeller, at their request; and also in the further sum of five thousand dollars for so much money before that time lent and advanced by the said plaintiffs to and for the use said defendants, and said Hood and Moeller, at their request. And being so indebted the said defendants, jointly and severally, with said Hood and Moeller, afterwards, to wit, on the day and year aforesaid, at the State of Ohio, and district aforesaid, in consideration of the premises, faithfully promised to pay the said three several sums of money

last above mentioned to the said plaintiffs, on request. Yet the said defendants, or the said Hood or the said Moeller, have not paid the said several sums of money, nor either of them, nor any part thereof, although often requested so to do, to the damage of the plaintiffs twenty thousand dollars, and therefore they sue.

By SMYTHE & SPRAGUE,
Att'ys for Pl'ffs.

Continuance.

And afterwards, to wit, at the April term of said court, in the year of our Lord one thousand eight hundred and fifty-two, this cause was continued.

Continuance.

And afterwards, to wit, at the October term of said court, in the year last aforesaid, this cause was further continued. And afterwards, to wit, on the 12th day of April, in the year of our Lord one thousand eight hundred and fifty-three, came the said defendants, by their attorneys, and filed their plea to said declaration, in the words and figures following, to wit:

Plea.

WILLIAM A. WOODWARD et al.
vs.
DANIEL POORMAN et al.

Rules after Oct. T., A. D. 1852.

And now come the said Daniel Poorman, Peter Overmier, George W. Binkley, Bernard Bowman, Jacob Poorman, John Fisher, Joseph Good, and Jacob Thomas, by Hunter and H. Stanberry, their attorneys, and defend the wrong and injury, when, &c., and say that they did not assume and promise in manner and form, as the said plaintiffs have above thereof complained against them, and of this they put themselves upon the country, &c.

HUNTER & HENRY STANBERRY,
Att'ys for Def'ts.

Continuance.

And afterwards this cause was continued from term to term of said court, until the April term thereof, in the year of our Lord one thousand eight hundred and fifty-four. And after-

wards, to wit, on the 19th day of April, it being at this said April term of said court, in the year last aforesaid.

Death of Joseph Good suggested.

"The death of Joseph Good, one of the defendants, is suggested, and this cause is continued."

Continuance.

And afterwards this cause was continued from term to term of said court, until the October term thereof, in the year of our Lord one thousand eight hundred and fifty-six.

Verdict.

And now, to wit, on the nineteenth day of November, being in the year and at the term of said court first herein mentioned, came the parties by their attorneys; and thereupon came a jury, to wit: Richard Cowling, Robert Cloud, Levi Buckingham, James R. Smith, Isaac Bruce, B. T. Dale, J. K. Smith, C. W. Pomeroy, Thompson L. Brown, W. L. Hudson, D. W. Dryden, and Joshua Jones, who, being duly empannelled and sworn to speak the truth upon the issue joined between the parties, upon their oaths do say, that the said defendants did assume and promise in manner and form as the said plaintiffs hath complained against them; and they assess the damages of the said plaintiffs by reason thereof to four thousand four hundred and seventy-three dollars and seventy-six cents.

Judgment.

It is therefore considered by the court that the said plaintiffs recover of the said defendants the said sum of four thousand four hundred and seventy-three dollars and seventy-six cents, their damages aforesaid, in form aforesaid assessed, and also their costs in this behalf expended, taxed at $68 85. Before the jury in this case withdrew from the bar of the court here, the defendants, by their attorneys, tendered their bill of exceptions to the opinions of the court upon the points in said bill mentioned, which was signed, sealed, and ordered to be filed, and made a part of the record in this case; which bill of exceptions is in the words and figures following, to wit:

Bill of exceptions.

"Woodward & Dusenberry *vs.* Daniel Poorman et al., Oct. T. 1856.—Bill of exceptions.

Be it remembered, that on the trial to the jury of the issue joined in this case, the following was all the evidence intro-

duced by either of the parties, viz: "15,000 dollars. Somerset, O., Oct. 24, 1849. Thirty days after date we, or either of us, promise to pay Mess. Woodward and Dusenberry or order, at their office in New York, the just and full sum of fifteen thousand dollars, for value received.

THOS. HOOD,
WM. F. MOELLER,
DANIEL POORMAN,
PETER OVERMIER,
G. W. BINKLEY,
BERNARD BOWMAN,
JACOB POORMAN,
his
JOHN ✕ FISHER, senr.,
mark.
JOSEPH GOOD,
JACOB THOMAS.

Endorsed: "Woodward & Dusenberry."

NEW YORK, *Oct.* 24, 1849.

Received of Thomas Hood a note signed by himself, Wm. F. Moeller, Daniel Poorman, Peter Overmier, George W. Binkley, Bernard Bowman, Jacob Poorman, John Fisher, sr., Joseph Good, and Jacob Thomas, payable 30 ds. after date to our order at our office, New York, for fifteen thousand dollars. In consideration of which we have this day issued to said Hood, in the name of John Ritchey, cashr., our certificate of deposit for six thousand (6,000) dollars, with this understanding, that when our said certificate shall be returned to us, the same is to be cancelled by the note of said Hood, and others first aforesaid, and said note to be returned to said Hood without other or further consideration.

$15,000. WOODWARD & DUSENBERRY.

NEW YORK, *Oct.* 24, 1849.

Mess. WOODWARD & DUSENBERRY:

GENTLEMEN: In consideration of the note of myself, Wm. F. Moeller, Danl. Poorman, Peter Overmier, G. W. Binkley, Bernard Bowman, Jacob Poorman, John Fisher, sr., Joseph Good, and Jacob Thomas, of this date, made payable to yourselves or order at our office in New York for fifteen thousand dollars, thirty days after date, I wish you to issue a certificate of deposit in favor of John Ritchey, cashr., for six thousand dollars; which certificate I agree to have held by said Ritchey as such cashr. as stock of the "Perry branch of the State Bank of Ohio in Somerset," with this understanding, that whenever I shall return or cause to be returned the said certificate, the same is

to be cancelled by delivering the said note of myself and others for fifteen thousand dollars, as first above stated. Your kindness in the premises will greatly oblige your obt. servant,

THOS. HOOD.

No. 150.

WOODWARD & DUSENBERRY,
45 *William street, New York.*

NEW YORK, *October* 24, 1849.

This is to certify that John Ritchey, Esq., cashier, has deposited with us six thousand dollars to the credit of himself, payable to his order at our office on the return of this certificate.
$6,000 100-00. Six thousand dollars, paid December 15,'49.
Endorsed: JOHN RITCHEY,
Cash'r.

Pay Messrs. Coming & Co. or order.

JNO. PETERS, C.
COMING, O.

To the honorable the Circuit Court of the United States in and for the seventh circuit and district of Ohio, in chancery sitting:

Your orators, Daniel Poorman, Peter Overmier, George W. Binkley, Bernard Bowman, Jacob Poorman, John Fisher, Joseph Good, and Jacob Thomas, complaining, show that they are sued jointly with Thomas Hood, William F. Moeller, in an action of assumpsit now pending on the law side of your honorable court, wherein William A. Woodward and William C. Dusenberry, late traders under the firm of Woodward & Dusenberry, are plaintiffs; which action is founded on a promissory note purporting to be made by your orators and the said Thomas Hood and William F. Moeller, dated Somerset, Ohio, October 24, 1849, for the sum of fifteen thousand dollars, payable thirty days after date to the said Woodward & Dusenberry, at their office in N. York. Your orators aver and charge that in so far as they are concerned, said promissory note is fraudulent and void, and without any consideration whatever; but that your orators are unable to prove the same to be so by disinterested testimony, and are under the necessity, in making their defence to said action at law, to call upon said plaintiffs, Woodward & Dusenberry, who are made defendants to this bill, to disclose and make discovery of certain material facts resting within their knowledge, to be used in evidence on the trial of said action at law in behalf of your orators; and particularly your orators charge that it is material for them to prove that said note was and is without any consideration to make the same

obligatory upon your orators; and that the same was obtained by said Woodward and Dusenberry with a full knowledge of such facts and circumstances as fix them with notice of the want of consideration therefor on the part of your orators, or required them to inquire into the same, and obtain from your orators correct and full information touching the bona fides of said note before they became holders thereof, and at that time.

And especially your orators charge that the said Woodward & Dusenberry never did in any way, directly or indirectly, pay or agree to pay, in money or property, any consideration whatever whereby they equitably, legally, or justly were entitled to be made payers of said note, and bind your orators as makers thereof for the sum of fifteen thousand dollars; and that at the time they received said note, they knew that the said sum of fifteen thousand dollars, for the payment of which said note purports to bind your orators, was fictitious and fraudulent as against your orators, and that the same was inserted in said note without the knowledge or consent of your orators. And further, your orators charge that the said Woodward & Dusenberry did not receive said note in a regular course of business, or upon any contract or transaction to which your orators were parties; and that they, the said Woodward & Dusenberry, well knew when they received it that the time and place expressed upon its face, as the time and place of its execution, was false, delusive, and fraudulent. Your orators further charge that their signatures, as they now appear to said note, were placed upon the paper long before said note was written over them, and when said paper was blank, except the superscription in figures at the upper part of "$1,500," and were given and intended for the purpose of enabling Hood and Moeller, the two first parties whose names appear as makers of said note, to obtain a loan of fifteen hundred dollars, and was intended to have been filled up as a note or bill for fifteen hundred dollars, to be discounted by some bank in Ohio for that sum, for the accommodation of said Hood and Moeller, and for no other purpose; and that the same was rejected by the banks in Ohio, at which it was offered for discount, and inadvertently left in the possession of said Hood and Moeller in blank, except as aforesaid. That the said Hood, in fraud of your orators, and without the knowledge or consent of your orators, having the possession of said blank as aforesaid, filled up the same, or caused it to be done, as the same now appears upon some private transaction between himself and the said Woodward & Dusenberry, the particulars whereof are not fully known to your orators, but in which none of your orators were in any way interested, as was well known to said Woodward and Dusenberry at the time.

Such being the state of facts in regard to said note, and your orators being unable to make full proof thereof by disinterested testimony as aforesaid in aid of their said defence at law, now here require the said Woodward & Dusenberry, and each of them, upon their and each of their corporal oaths, full, true, and explicit answers to make unto the following interrogatories, to the end that your orators may have the benefit of their answers in aid of their said defence at law; that is to say:

1. Interrogatory first. At what time and place did you first see said promissory note, or the paper on which the same is now written? In whose possession was it? Was the body of said note as the same now appears, including the date and place of its execution at the time you, or either of you, first saw it written out as the same now appears, or was the same or any part of it; and what parts when you, or either of you, first saw it in blank?

2. Interrogatory second. By whom, when, and where, was the body of said note, including its date and the place at which it purports to have been made, written out or filled up?

3. Interrogatory third. Were these complainants, or either of them, and if either of them, which of them, present at the time the body of said note was written out or filled up?

4th. Interrogatory fourth. When, where, and from whom, did you receive said notes? And were the complainants, or either of them, and which of them, if either, present at the time said note was delivered to you? Or did they, or either of them, and which of them, have any knowledge of the fact of the delivery of said note to you at the time of its delivery, or of the particulars of the transaction in which said note was delivered to you? And if you shall assert or pretend in answer to this interrogatory, that these complainants, or either of them, had any knowledge of the particulars of the transaction in which said note was delivered to you, state fully and at large how you know that such was the fact, and the particulars in detail of your knowledge about it?

5. Interrogatory fifth. Did you ever pay, or agree to pay, to these complainants, or either of them, and which of them, if either, any consideration whatever for said note? If yea, when, where, and what consideration in particular did you pay to either of them for it?

6. Interrogatory sixth. Did these complainants, or either of them, and if either, which of them, ever to your knowledge in any way whatever receive any consideration for said note? If yea, what consideration did they, or either of them, and which of them, receive thereof, and when, where, and from whom did they receive the same?

And these said complainants require the said Woodward &

Dusenberry, in answering to said interrogatories, to limit and confine their answers thereto to the particular matters called for by the several interrogatories, and that they answer each seperately and distinctly, and from their own personal knowledge only, and not upon the information of others, or upon their belief or opinion in the premises. And your orators pray that said defendants, Woodward & Dusenberry, be compelled and required to answer all and each of said interrogatories in manner aforesaid; and as to all and every one of their statements and allegations of this, their bill of discovery, save and except the answers to their said interrogatories as aforesaid, said defendants are not called upon or requested to answer, or to make any discovery.

H. H. HUNTER,
H. STANBERRY,
Solicitors for Complainants."

The separate answer of William C. Dusenberry, to the bill of discovery exhibited against him and William A. Woodward by Daniel Poorman and others, in the circuit court of the United States within and for the district of Ohio, saving and reserving to himself all, and all manner of exceptions to said bill for answer thereto, the said William C. Dusenberry answers, and says:

1st. In answer to the first interrogatory of said bill, this respondent says, that the first time he saw the note in said interrogatory mentioned, or the paper on which it is written, was on or about the 24th day of October, A. D. 1849, at the office of Woodward & Dusenberry, in the city of New York, and at the time, the body of the note in all particulars, including the date and place mentioned at the top, was the same on its face as it now appears, and no part of the same was in blank. The note was at that time in the possession of Thomas Hood.

2d. In answer to the second interrogatory of said bill, respondent says that he has no knowledge, except from the appearance of the note as it now is, as to when or where the said note, or any part of it, was written out or filled up.

3d. In answer to the third interrogatory of said bill, respondent says, that he has no knowledge as to whether either of said complainants were present when said note was written out or not.

4th. In answer to the fourth interrogatory of said bill, respondent says, that said note was received by respondent and his said partner, William A. Woodward, from the hands of Thomas Hood, on or about the day *is* bears date, at the office of said Woodward & Dusenberry, in the city of New York, and neither of the said complainants was present at the time said

note was delivered. This respondent was informed by said Hood, that said note had been executed by himself and his friends, the other signers thereof, for the purpose of borrowing money thereon for the joint benefit of all of them, and this respondent received said note with that understanding; but this respondent does not know that at the time said note was delivered to Woodward & Dusenberry, the said complainants, or either of them had any actual knowledge of such delivery or any of the particulars thereof.

5th. In answer to the fifth interrogatory of said bill, this respondent says, that at the time said note was delivered to the said Woodward & Dusenberry, they issued and delivered to said Hood, for the joint use and benefit of all the parties signing said note, as this respondent understood it, the certificate of deposit of said Woodward & Dusenberry for the sum of six thousand dollars, by request of said Hood made payable to the order of John Richey, esqr., cashier at the office of said Woodward & Dusenberry, in New York city, on the return of said certificate, and which said certificate was received by said Hood on behalf of himself and his associates, as so much cash lent by said Woodward & Dusenberry to them. In consideration whereof, said note was delivered to the said Woodward & Dusenberry as their security for the payment of said money or the return of said certificate, in case it should not be used by said Hood and his associates; and said Woodward & Dusenberry gave said Hood a receipt for said note accordingly. And this respondent further states that afterwards, on the 15th day of December, A. D. 1849, the said certificate of deposit was duly presented to said Woodward & Dusenberry at their office, for payment by Messrs Coming & Co., brokers of said city of New York, with the endorsement of said Ritchie duly made thereon, and the sum therein specified was on that day paid by said Woodward & Dusenberry to said Coming & Co., as the bona fide holders thereof. And this respondent further says, that in obtaining said loan, and in every thing connected therewith, the said Hood represented himself as acting for all the parties who signed said note, and said loan was so made with the understanding that it was a loan to all the parties signing said note, or for the use and benefit of them all as well as the said Hood; and said note was received by this respondent in good faith as a genuine bona fide note of all the parties, executed and properly used for the purpose of obtaining said loan, and without any knowledge or suspicion that said note was not a true and genuine note of all the parties, and intended by all, for the purpose to which it was appropriated as aforesaid. And the said loan was so made for the accommodation of said Hood and his associates, without any other consideration whatever.

6th. In answer to the sixth interrogatory of said bill, this respondent says, that he has no knowledge that said complainants ever received any other, or further consideration for said note, than these received by or through said Hood, or said Ritchey, as hereinbefore stated. And this respondent, denying all fraud and combination, and all knowledge of the fraudulent acts or intentions of said Hood or others, wherewith they stand charged, and having fully answered, pray to be hence dismissed with his costs in this behalf expended.

WM. COXE DUSENBERRY.

STATE OF NEW YORK,
City and County of New York, ss.

June 28th, A. D. 1852.

Then personally appeared before me, the undersigned, an Ohio commissioner in the State of New York, the above named Wm. Coxe Dusenberry, who being by me duly sworn, did depose and say, that he has read the foregoing answer subscribed by him, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated on his information or belief, and as to those matters that he believes it to be true.

[SEAL.] Witness my hand and seal of office, the said 28th day of June, A. D. 1852.

MOSES B. MACLAY,
Ohio Commissioner in New York to take affidavits, &c., duly commissioned and qualified.

Thomas Hood, esq., to Woodward and Dusenberry, *Dr.*

1849.				
Decem. 15	To cash paid for certif. deposit to order J. Ritchey, cashr. - - - - -		6,000 00	
	" telegraph to notify this fact		1 50	
Jan. 8	" do - - - - -		1 15	
12	" do - - - - -		95	
1850.	*Credit.*			
Jany. 2	By dft. on Adams & Sturgess 4 days - - - - -		3,000 00	
	Interest off - -		2 33	
				2,997 67
	We telegraph'd Hood 3 times: wrote him 15th Decr. -			
	12th Jany. -			
	17 do. -			
	21 do. -			
	26 do. -			

The only letter received from him in interim is No. 9. He has not answered either of the eight communications above named.

And the evidence being so given to the jury, the counsel of the defendants asked the court to instruct the jury, that if they should find from the evidence that the said Thomas Hood was only authorized to use the said promissory note to borrow money thereon for the joint benefit of himself and the other *makes* thereof, and that at the time the plaintiffs received the same from said Hood, and delivered to him their said certificate of deposit, they had notice that Hood so held said note for the said purpose, then the plaintiffs were not entitled to recover of these defendants; which instructions the court refused to give, but did instruct the jury that the said certificate of deposit, so delivered to Hood, was in effect money, and came within the authority to borrow money.

To which refusal of the court to give the instructions asked, and also to the said instructions as given by the court, the said defendants did then and there except, and prayed the court to sign and seal this their bill of exceptions, which is done accordingly, and ordered to be made part of the record.

JOHN McLEAN. [SEAL.]
H. H. LEAVITT. [SEAL.]

Allowance of writ of error.

And afterwards, to wit, at the February term of said court, in the year of our Lord one thousand eight hundred and fifty-seven, February 26th, said court caused the following entry to be made upon its journal, to wit: "Woodward & Dusenberry *vs.* Daniel Poorman et al., assumpsit. Judgment October Term, 1856. On motion of defendants, by their attorneys, the court allow a writ of error in this case to the Supreme Court of the United States, on bond being given according to the act of Congress in such case made and provided in the penal sum of five hundred dollars; whereupon the plaintiffs gave bond to the acceptance of the court, which bond is in the words and figures following, to wit:

Bond.

"Know all men by these presents, that we, Daniel Poorman, Peter Overmier, George N. Binkley, Bernard Bowman, Jacob Poorman, John Fisher, senr., Jacob Thomas, John Good, Jacob Coolman, Charles C. Hood, are held and firmly bound unto William A. Woodward and William C. Dusenberry in the penal sum of five hundred dollars, to the payment of which well and truly to be made we do by these presents jointly and severally bind ourselves, our heirs, executors, and administrators, sealed with our seals, and dated this 31st day of January, A. D. 1857.

The condition of the above obligation is such, that whereas the said Daniel Poorman, Peter Overmier, George W. Binkley, Bernard Bowman, Jacob Poorman, John Fisher, senr., and Jacob Thomas have obtained an allowance of a writ of error upon a certain judgment rendered in the circuit court of the United States, seventh circuit and southern district of Ohio, at the October term of said court, A. D. 1856, in favor of the said William A. Woodward and William C. Dusenberry, and against the said Daniel Poorman, Peter Overmier, George W. Binkley, Bernard Bowman, Jacob Poorman, John Fisher, senr., and Jacob Thomas, for the sum of four thousand four hundred seventy-three dollars and seventy-six cents ($4,473 76) damages, and also for sixty-eight dollars and eighty-five cents ($68 85) costs. Now, if the said Daniel Poorman, Peter Overmier, George W. Binkley, Bernard Bowman, Jacob Poorman, John Fisher, senr., and Jacob Thomas shall pay the condemnation money and costs in case the said judgment of the said circuit court shall be affirmed by the Supreme Court of the United States, in whole or in part, then the above obligation shall be void, otherwise in full force in law.

DANIEL POORMAN, [SEAL.]
PETER OVERMIER, [SEAL.]
G. W. BINKLEY, [SEAL.]
BERNARD BOWMAN, [SEAL.]
JACOB POORMAN, [SEAL.]
JACOB THOMAS, [SEAL.]
JOHN GOOD, [SEAL.]
JACOB COOLMAN, [SEAL.]
CHARLES C. HOOD. [SEAL.]

Signed in presence of—
R. F. HUKMAN.

UNITED STATES OF AMERICA,
Southern district of Ohio, ss.

I, William Miner, clerk of the circuit court of the United States within and for the seventh circuit, and southern district of Ohio, do hereby certify that the foregoing is a true copy of the process, pleadings, and proceedings thereupon had by the court aforesaid, as the same remains of record in my office.

In testimony whereof, I have hereunto set my name and affixed the seal of said court, at the city of Cincinnati, [L. S.] this 30th day of March, 1857, and of the independence of the United States the 81st.

WM. MINER, *Clerk*.

THE UNITED STATES OF AMERICA.
Supreme Court of the United States.

To William A. Woodward and William C. Dusenberry, late partners under the firm of Woodward & Dusenberry, greeting:

Whereas Daniel Poorman, Peter Overmire, George W. Burkley, Bernard Bowman, Jacob Poorman, John Fisher, sen'r, and Jacob Thomas, obtained the allowance of our writ of error to the circuit court of the United States, seventh circuit, southern district of Ohio, directed, to remove into the said Supreme Court, to be holden at the city of Washington, on the first Monday in the month of December next, the record of a certain plaint, process, proceedings, and judgment in an action of assumpsit; wherein you, the said William A. Woodward & William C. Dusenberry, late partners in business under the firm of Woodward & Dusenberry, have in that action lately recovered against the said Daniel Poorman, Peter Overmire, George W. Burkley, Bernard Bowman, John Fisher, sen'r, Jacob Thomas, and Jacob Poorman, four thousand four hundred seventy-three dollars damages and costs, as by the said record in the said circuit court remaining appears; in which said record and proceedings, and also in the rendition of the judgment thereupon, manifest error hath intervened, as by the said Daniel Poorman, Peter Overmire, George W. Burkley, Bernard Bowman, John Fisher, sen'r, Jacob Poorman, and Jacob Thomas, we are informed, and our said writ of error granted, issued and allowed as aforesaid, for the purpose of correcting the errors aforesaid alledged, if any there be: you are, therefore, hereby commanded and cited, to be and appear before the judges of the said Supreme Court, at the city of Washington, at the next term of said court, to be holden on the first Monday in the month of December next, to have the errors aforesaid corrected, and the judgment of our said Supreme Court thereupon.

Witness the honorable Roger B. Taney, Chief Justice of the United States of America, this 8th day of April, in the year of our Lord one thousand eight hundred and fifty-seven, and of the independence of the United States of America the 81st.

JOHN McLEAN.

We acknowledge service of this citation, May 18, 1857.

SMYTHE & SPRAGUE,
Att'ys for Def'ts in error.

THE STATE OF OHIO,
Fairfield county, ss:

Hocking H. Hunter being duly sworn, says, that on the 18th day of May, 1857, he served the within citation on George B.

Smythe, one of the attorneys of record in the within named case for the within named Woodward & Dusenberry, and at the same time delivered to the said Smythe a copy thereof, who thereupon entered the acknowledgment of service which appears above written, signed Smith & Sprague, att'ys for defendants.

H. H. HUNTER.

[SEAL.] Sworn to and subscribed by the said H. H. Hunter, before me, the 20th day of May, 1857.

JOHN A. HUNTER,
Notary Public.

SUPREME COURT OF THE UNITED STATES.

United States of America, ss:

The President of the United States of America, to the honorable the judges of the circuit court of the United States, seventh circuit and southern district of Ohio, greeting:

Because in the record and proceedings, and also in the rendition of a judgment in a plea, which is in the said circuit court before you, between William A. Woodward & William C. Dusenberry, late partners in business under the firm of Woodward & Dusenberry, plaintiffs, and Daniel Poorman, Peter Overmire, George W. Burkley, Bernard Bowman, John Fisher, sen'r, Jacob Thomas, and Jacob Poorman, defendants, a manifest error hath happened to the great damage of the said defendants, as by their complaint appears; and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at the city of Washington, on the first Monday in the month of December next, in the said Supreme Court, then and there to be held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States should be done.

Witness, the honorable Roger B. Taney, Chief Justice of the said Supreme Court of the United States, this eighth day of April, in the year of our Lord one thousand eight hundred and fifty-seven, and of the independence of the United States of America the

[SEAL.]

Attest: WM. MINER,
Clerk.

SUPREME COURT OF THE UNITED STATES.

DANIEL POORMAN, PETER OVERMIER, GEORGE W. BINKLEY, BERNARD BOWMAN, JACOB POORMAN, JOHN FISHER, senr., and JACOB THOMAS,
vs.
WM. A. WOODWARD and WM. C. DUSENBERRY, late partners, under the firm of WOODWARD & DUSENBERRY.
} In error.

The said plaintiffs, by Henry Stanbey and H. H. Hunter, their attorneys, come and say, that in the aforesaid record and judgment of the said circuit court of the United States for the district of Ohio, wherein the said Woodward and Dusenberry (the defendants herein) were plaintiffs, and they (the plaintiffs herein) were defendants, manifest error intervened, to their injury and prejudice.

First. Because they say, that on the trial of the issue joined between the parties before the jury, the court erred in refusing to instruct the jury upon the evidence, and upon the request of the plaintiffs herein, (defendants in that behalf,) "that if they should find from the evidence that the said Thomas Hood was only authorized to use the said promissory note to borrow money thereon, for the joint benefit of himself and the other makers thereof, and that at the time the plaintiffs" (defendants herein) received the same from the said Hood, and delivered to him this said certificate of deposit, they had notice that said Hood so held said note for said purpose, then the said plaintiffs were not entitled to recover of the said defendants;" and because they say the said court also erred in instructing the jury, "that the said certificate of deposit so delivered to the said Hood," as in the said record the same appears, "was in effect money, and came within the authority to borrow money." For which errors and others in said record apparent, the plaintiffs pray that said judgment be revised, and they restored to all they have lost thereby.

HENRY STANBERY,
H. H. HUNTER,
Att'ys for Plaintiffs.